IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 17369 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHANTABEN KANJIBHAI TADVI D/O.KANJIBHAI BHURABHAI TADVI - Petitioner(s)

Versus

STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :

MR CHIRAG B PATEL for Petitioner(s) : 1,
MR PD BHATE ASST GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2,
MR JITENDRA M PATEL for Respondent(s) : 3 - 7.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/09/2005

ORAL JUDGMENT

1. Rule. Shri P.D.Bhate, learned AGP waives service of rule on behalf of the respondents Nos.1 & 2 – State Authority. Shri J.M.Patel, learned advocate

waives service for respondent No.3 to 7. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today.

2. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary, Revenue Department (Appeals), State of Gujarat dated 26.12.2004 passed in Revision Application No.2 of 2003 in dismissing the same and confirming the order passed by the District Development Officer, Vadodara dated 7.2.2003 by which the District Development Officer, Vadodara has granted Non Agricultural Use Permission in favour of the respondents Nos.3 to 7.

3. The dispute is with regard to the land bearing Survey Nos. 2 & 5 admeasuring 57,668.00 sq.mts situated at Sayajipura, Vadodara. The respondents Nos.3 to 7 who are the owners and occupants of the lands in question, had submitted an application before the District Panchayat, Vadodara on 2.11.2002 for grant of Non Agricultural Use Permission under

Section 65 of the Bombay Land Revenue Code. It appears from the record that the competent authority under the District Panchayat by order dated 7.2.2003 granted N.A.Use permission in favour of the owners / occupants – respondent Nos.3 to 7 herein. Being aggrieved and dissatisfied with the order passed by the District Development Officer, Vadodara dated 7.2.2003 the petitioner preferred revision application No.2 of 2003 before the Secretary, Revenue Department (Appeals), State of Gujarat. It was contended on behalf of the petitioner that she claims to be the tenant of the land in question and that tenancy proceedings initiated at the instance of the petitioner are pending and even the Gujarat Revenue Tribunal has granted order of status quo with regard to the land in question and therefore, it was contended that if the respondent Nos.3 to 7 put up construction on the basis of the said Non Agricultural Use Permission and the land is converted into Non Agricultural Use, then the tenancy rights of the petitioner would be defeated. It was also contended on behalf of the petitioner that inspite of the facts that the petitioner submitted objections

against granting of N.A. Permission, the District Development Officer passed the order without giving an opportunity to the petitioner. The Secretary, Revenue Department (Appeals), State of Gujarat taking note of the proceedings before the Gujarat Revenue Tribunal dismissed the said revision application, however, while dismissing the same, he has so observed that N.A.Use Permission with regard to the land bearing Survey No.5 in which the petitioner claims to be the tenant would be subject to the ultimate outcome of the proceedings before the Gujarat Revenue Tribunal. Being aggrieved and dissatisfied with the order passed by the Secretary, Revenue Department (Appeals), State of Gujarat dated 27.12.2004 passed in Revision Application No.2 of 2004, the petitioner has preferred the present special civil application under Articles 226 and 227 of the Constitution of India.

4. Shri B.S.Patel, learned advocate appearing on behalf of the petitioner has vehemently submitted that granting of Non Agricultural Use Permission may defeat the rights of the petitioner i.e tenancy

rights and may affect the proceedings before the Gujarat Revenue Tribunal, in which, the Gujarat Revenue Tribunal has granted order of status quo with regard to the land. He has also further submitted that if the respondent Nos.3 to 7 put up the constructions and/or sells the property / land in question by sub plotting, in that case, rights of the petitioner would be affected and therefore, it is requested to allow the present Special Civil Application.

5. Shri J.M.Patel, learned advocate appearing on behalf of the respondents Nos.3 to 7 has opposed the present Special Civil Application and affidavit-in-reply is filed on behalf of the respondents Nos.3 to 7. Shri J.M.Patel, learned advocate for the respondents has argued the matter on merits by submitting that the claim of the petitioner with regard to the tenancy rights is not tenable. However, in view of the fact that the proceedings are pending before the Gujarat Revenue Tribunal, this Court has declined to consider the same. Shri J.M.Patel, learned advocate is not in position to dispute the

tenancy proceedings before the Gujarat Revenue Tribunal and the order of status quo with regard to the land granted by the Gujarat Revenue Tribunal.

6. The apprehension on the part of the petitioner that by virtue of N.A. Use permission, the rights of the petitioner will be affected and / or apprehension on the part of the petitioner that if by virtue of N.A.Use permission, the respondent Nos.3 to 7 would be putting up construction and / or do sub plotting is not well founded. The Secretary (Appeals), Revenue Department, State of Gujarat in its judgment and order dated 27.12.2004 while dismissing the revision application has also taken care of the aforesaid situation and has observed that the decision that may be taken by the Gujarat Revenue Tribunal would be binding. So far as the apprehension on the petitioner with regard to putting up any construction by the respondent Nos.3 to 7 on the basis of N.A.Use Permission and/or changing the condition of the land by sub plotting is also, is also not well founded as in fact, the Gujarat Revenue Tribunal in its order dated 27.12.2004 has already granted the order of

status quo with regard to the land in question and therefore, so long as the order passed by the Gujarat Revenue Tribunal exists, the respondent Nos.3 to 7 are not in position to change the position of the land in question either by way of putting up the construction and/or sub plotting. Under the circumstances, the apprehension on the part of the petitioner is not well founded.

7. With aforesaid observations, the present Special Civil Application is dismissed.

Rule is discharged with no order as to costs.

[M.R.Shah, J.]

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